IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.1204 OF 2006

Shri Bhaskar Yadavrao Pawar .. ..Petitioner

Versus

Shri Edward Zuran Koyalo .. ..Respondent

Smt.A.H.Ghadge for petitioner

Mr.Nitin Muley i/b G.S.Godbole for respondent

CORAM : P.V.KAKADE, J.

DATE : 12TH APRIL 2006

P.C.:

1. Heard the learned counsel for both the parties. Perused the record.

2. The Petitioner-tenant has preferred this petition against the order passed by Addl. District Judge, Palghar dismissing the appeal and confirming the judgment and order passed by trial court dated 11.11.2000 decreeing the plaintiff’s suit for recovery of possession of the suit

premises.

3. The petitioner is a tenant of respondent in Room no.3 House No.224. It is the case of the plaintiff that the petitioner-defendant was monthly tenant of the suit premises at the monthly rent of Rs.18/= p.m. and the suit premises was given for residential purpose. It was alleged by the plaintiff that the defendant was not residing in the suit premises for the period of three years prior to the inception of the suit and he had kept the suit premises closed for last three years. It was further alleged that defendant get suitable alternative premises at village Sakwar, Tal. Vasai and defendant had shifted his residence there. On such and other ground the suit was sought to be decreed.

4. The defendant contested the suit, inter alia, denying the allegations made by the plaintiff submitting that the State Government granted him agricultural land where he has built home for aged persons and reside there. However, his married son continuous to reside in the suit premises which is acquired by him since the year 1964.

5. The learned judge after hearing both the parties

and on the basis of available evidence found that the plaintiff had proved that the defendant had not used the suit premises for the purpose for which it was let out for last three years prior to the institution of the suit and has also held that the defendant had acquired suitable alternate accommodation for his residence and as such the suit came to be decreed.

. The appeal was carried to the District Court. The lower appellate court judge after hearing both the parties concurred with the findings recorded by the trial court holding that the suit premises was not used by the defendant for the purpose for which it was let out to him and it was kept closed for three years. It was also held that the defendant was acquired suitable alternate accommodation for his residence and as such the appeal came to be dismissed. Hence the present petition.

6. At the out set, it may be noted that the learned counsel for the petitioner brought to my notice the entire compilation of evidence led by defendant in order to show that the defendant’s son was residing in the suit premises for which purpose some correspondence was addressed on the suit premises was produced. However, it is pertinent to

note that the son of the petitioner who is said to be occupying the suit premises is not examined in witness. In my considered view, he was the best witness to testify the evidence. Be as it may, the fact remains that it is admitted as well as evidential position, as can be seen from the deposition of the defendant himself, that the land to the extent of 01 Hector 65 Rs granted by the State Government to the petitioner-defendant at village Sakwar for cultivating, where he has also built home for aged and his residence and the said Trust is created by him and stays there. This aspect itself shows that the said home for aged is a permanent structure established under registered Trust under the Bombay Public Trust Act and the defendant is a President of the said Trust and he is residing on that property and managing the said Trust. Under the circumstances, it cannot be said that he continues to reside in the suit premises. The submission that his married son is occupying the suit premises is not supported by cogent and conclusive evidence and therefore, I do not see any reason why the findings recorded by both the courts below should be disturbed.

7. Be as it may , the fact remains that it is not fit case to interfere by virtue of the writ jurisdiction

contemplated under Article 227 of the Constitution of India.

8. In the result the petition stands dismissed with no order as to costs.

9. At this stage the learned counsel for the petitioner sought some time to vacate the suit premises. In view of the facts and circumstances, the decree for possession shall not be executed for a period of six months from the date of this order on condition that the petitioner and all adult members of his family shall furnish undertaking to that effect and shall not create third party interest in the suit premises and shall continue to pay the agreed rent during the period of occupancy. The undertaking to be furnished within two weeks from the date of this order.